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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Defendant The Brinkmann Corporation
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Signature	/Susan Hwang/
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Attachments	Opposition to Motion to Enforce Suspension.PDF ( 55 pages )(4322109 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO ENFORCE  
SUSPENSION OF PROCEEDINGS**

**I.**

**INTRODUCTION**

Opposer, Brink's Network, Inc., has moved the Trademark Trial and Appeal Board to issue an Order directing Applicant The Brinkmann Corporation to refrain from enforcing pre-existing subpoenas issued to third party Hampton Products International Corporation until after the Board's disposition of Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann filed on October 1, 2009. Opposer has also requested the Board to indicate in its Order that a sanction be imposed on Brinkmann if Brinkmann proceeds with filing a motion in the U.S. District Court for the Central District of California seeking to enforce the subpoenas before the Board's disposition of Opposer's Motion to Compel.

Pursuant to 37 C.F.R. § 2.127(a), Brinkmann responds by asking the Board to deny Opposer's request in its entirety. First, Opposer does not even have standing to bring its

motion because the subpoenas at issue are directed to third party Hampton, not Opposer. Second, the Board has no jurisdiction over discovery directed to a third party and has no statutory authority to “enforce” the suspension, even if it wished to do so. As the Board itself has noted in the past, jurisdiction lies properly with the federal district court that issued the subpoenas.

It is apparent that Opposer has taken control of Hampton’s response to the subpoenas, and Opposer’s motion is nothing more than an attempt to stonewall Brinkmann’s right to discovery from Hampton, discovery that was due long before Opposer filed its Motion to Compel. Opposer should not be allowed to shield Hampton from its discovery obligations through delay tactics and an intentional disregard of the Board’s procedural rules.

## II.

### **FACTUAL BACKGROUND**

#### **A. Status of Proceeding**

On January 17, 2003, Brinkmann filed the application at issue in this opposition, Ser. No. 76/483,115, for its trademark BRINKMANN in multiple classes to cover its then-existing lines of goods. The application was published for opposition on October 5, 2004. Opposer Brink’s Network filed a NOTICE OF OPPOSITION on April 1, 2005. Opposer objected to registration of BRINKMANN only in connection with “home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets,” in International Class 9.

On August 27, 2009, Brinkmann filed a Motion to Divide Application, requesting that the opposed goods be divided out from the remaining goods in the multi-class application. The Board granted Applicant’s motion on divide on September 16, 2009 and suspended

proceedings pending the completion by the Intent-to-Use Unit of the application divisional process.

On October 1, 2009, Brink's Network filed a Motion to Compel the discovery deposition of Brinkmann's president Mr. Brinkmann ("Brink's Network's Motion to Compel"). The Board suspended the (already suspended) trademark opposition proceeding, invoking Trademark Rule 2.120(e)(2), which requires suspension of proceedings pending outcome of the motion to compel, but does not toll the time for a "party" to respond to any outstanding discovery requests or appear for any noticed deposition. The Board has not yet ruled on Brink's Network's Motion to Compel and the proceeding is still suspended.

**B. Hampton Subpoenas**

Through discovery, Brinkmann identified Hampton as a licensee of Brink's Network who has been licensed to use the BRINK'S marks. Consequently, on August 10, 2009 – long prior to the Board's suspension order – Brinkmann caused the federal district court for the Central District of California to issue a subpoena for the discovery deposition of Hampton under FED. R. CIV. P. 30(b)(6) ("Deposition Subpoena") and a subpoena *duces tecum* to Hampton for the production of documents and things ("Document Subpoena") (collectively, "Subpoenas"). (Opposer's Declaration of Kristin T. D'Andrea, "D'Andrea Decl.," ¶ 2 & Exh. A.) Hampton was required to produce responsive documents and things by August 25, 2009 and appear for a deposition on September 1, 2009. *Id.*

On August 14, 2009, counsel for Brink's Network advised Brinkmann that counsel would also represent Hampton. (Declaration of Susan Hwang, "Hwang Decl.," ¶ 3 & Exh. A.) Counsel also advised Brinkmann that they were consulting with Hampton whether documents could be produced by August 25, 2009 but that the September 1, 2009 deposition date would not work because counsel would be traveling abroad that day. *Id.* Counsel suggested that

Hampton's deposition should take place in mid-October and stated that they would provide several dates in October when Hampton would be available. *Id.*

On August 20, 2009, counsel for Hampton notified Brinkmann that documents could not be produced by August 25 but that Hampton would endeavor to gather the documents "in the next few weeks." (Hwang Decl., ¶ 4 & Exh. B.) Counsel also asked of Brinkmann's availability in mid-October for Hampton's deposition. *Id.* Brinkmann responded that same day that it would look into such availability dates. (D'Andrea Decl., ¶ 5 & Exh. B.)

On August 31, 2009, Brinkmann forwarded an amended schedule of deposition testimony topics and an amended schedule of documents and things to Hampton's counsel and asked whether counsel would accept service on behalf of Hampton. (Hwang Decl., ¶ 5 & Exh. C.) Hampton's counsel agreed to accept service. (Hwang Decl., ¶ 6 & Exh. D.)

Having received no communication from Hampton since the end of August, including any written objections to the Subpoenas, any documents or any deposition availability dates, Brinkmann contacted Hampton on October 7, 2009 and requested all responsive documents and availability dates for a November deposition by October 21, 2009. (D'Andrea Decl., ¶ 4 & Exh. C.) Otherwise, Hampton was advised, Brinkmann would move to compel. *Id.*

On October 21, 2009, counsel for Hampton sent a letter to Brinkmann suggesting that Hampton had never provided any availability dates because it was waiting to hear from Brinkmann on dates first. (D'Andrea Decl., ¶ 5 & Exh. D.) Furthermore, Hampton asserted that Trademark Rule 2.120(e)(2), which does not toll a "party's" obligation to respond to outstanding discovery, *did* toll Hampton's discovery obligations because it is not a "party" to the trademark opposition proceeding between Brinkmann and Brink's Network. *Id.* Hampton advised that it would serve responses and objections to the Subpoenas and provide availability dates when the Board resolved Brink's Network's Motion to Compel and resumed proceedings. *Id.*

On October 30, 2009, Brinkmann sent a letter to Hampton noting that Hampton's interpretation of Trademark Rule 2.120(e)(2) is illogical and that Brinkmann had no reason to provide dates for its availability for Hampton's deposition when Hampton had not produced a single document to date, in preparation for a deposition. (D'Andrea Decl., ¶ 6 & Exh. E.) Brinkmann requested Hampton's responses to the Subpoenas by November 13, 2009. *Id.*

Hampton failed to produce any documents or provide any deposition availability dates by that date. (Hwang Decl., ¶ 7.) Instead, counsel for Hampton sent a letter to Brinkmann merely reiterating the arguments of its October 21, 2009 letter. (D'Andrea Decl., ¶ 7 & Exh. F.)

On December 11, 2009, Brinkmann sent a letter to Hampton requesting a pre-filing conference under the federal district court for the Central District of California's LOCAL RULE 37-1 in order to attempt to resolve the parties' differences. (D'Andrea Decl., ¶ 8 & Exh. G.) In that letter, Brinkmann again pointed out that it is illogical to assume that a non-party's discovery obligations are tolled by negative implication merely because a party's discovery obligations are not tolled. *Id.*

On December 21, 2009, the parties had a telephone conference regarding Hampton's refusal to comply with the Subpoenas, but the parties maintained their respective positions and did not resolve the matter. (Hwang Decl., ¶ 8.) Brinkmann thus advised Hampton that it would prepare the motion to enforce the Subpoenas for filing in the federal district court for the Central District of California. *Id.*

That same day, Brink's Network filed the instant Motion to Enforce Suspension requesting the Board to order Brinkmann from refraining filing its motion to enforce the Subpoenas prior to the Board's resolution of Brink's Network's Motion to Compel and to impose sanctions against Brinkmann.

### III. DISCUSSION

Even though it has no standing with respect to the Subpoenas issued to Hampton, and even though the Board has no jurisdiction to enforce or quash the Subpoenas, Brink's Network has filed its Motion to Enforce Suspension of Proceedings requesting the Board to order Brinkmann from refraining filing a motion to enforce the Subpoenas prior to the Board's resolution of Brink's Network's Motion to Compel. For all the reasons below, the Board should properly deny Opposer's motion.

**A. The Board Has No Jurisdiction Over the Enforcement of Subpoenas Against Third Party Hampton**

Although the parties Brinkmann and Brink's Network are involved in a trademark opposition proceeding before the Board, Brink's Network's licensee Hampton is not a party. Therefore, Brinkmann must go to the federal district court for the Central District of California (where the Subpoenas were issued) to enforce the Subpoenas against Hampton.

The statutory authority conferring jurisdiction for the Subpoenas served on Hampton is 35 U.S.C. § 24, which provides in relevant part as follows:

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent and Trademark Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office....A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify.

Rule 45 of the FEDERAL RULES OF CIVIL PROCEDURE is the proper procedural vehicle to secure attendance at a deposition or the production of documents and things from a person who is not a party to a trademark opposition proceeding before the Board, by issuance of a subpoena. *See generally* FED. R. CIV. P. 45. It is the court that issued that subpoena and not the Board that has jurisdiction over discovery sought from a non-party in a trademark opposition proceeding. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 404.03(a)(2) (“If a person named in a subpoena compelling attendance at a discovery deposition fails to attend the deposition, or refuses to answer a question propounded at the deposition, the deposing party must seek enforcement from the United States District Court that issued the subpoena; the Board has no jurisdiction over such depositions.”). The Board has made it quite clear that it has no jurisdiction over third party discovery. *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ.2d 1303, 1304 n.3 (TTAB 1987) (“The Board, of course, has no jurisdiction over depositions of third parties by subpoena and, thus, has no authority to quash such depositions. Proceedings relating to the depositions of the subpoenaed non-parties are within the control of the district court.”).

Because it is the federal district court that has the power to enforce or quash subpoenas and not the Board, the Board cannot “enforce” the suspension against Brinkmann and regulate when enforcement of the Subpoenas against Hampton takes place. For this reason alone, the Board should deny Opposer’s motion.

**B. Brink’s Network Has No Standing to Bring Its Motion to Enforce Suspension**

Even if the Board had the jurisdiction to hear Opposer’s motion, Opposer does not have standing to bring its motion. It is well-settled that a party has no standing to move to quash the subpoena against a third party witness who is not a party to a proceeding and has not joined in the motion to quash. *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979)). The only very



narrow exception is when the party is in possession of the subpoenaed materials and has a personal right or privilege that should be enforced to prevent the third party witness from violating that right or privilege. *Id.*; see also *Diageo Brands, B.V. v. Compania De Centroamerica, S.A.*, 2007 U.S. Dist. LEXIS 68132, \*10-12 (S.D. Fla., Sept. 14, 2007).

Here, Brink's Network, not Hampton, has filed the Motion to Enforce Suspension, but Brink's Network is not the subpoenaed party. Nor has Brink's Network alleged that it has possession of the subpoenaed materials or that Hampton possesses privileged documents. Quite simply, Brink's Network has absolutely no standing to bring its Motion to Enforce Suspension.

For this reason as well, the Board should deny Opposer's motion.

**C. Hampton's Compliance With the Subpoenas is Not Tolloed Under the Trademark Rules**

Brink's Network argues that its licensee Hampton is not required to comply with the Subpoenas until after Brink's Network's Motion to Compel is resolved by the Board.

Hampton's position is based on Trademark Rule 2.120(e)(2), which states as follows:

When a party files a motion for an order to compel discovery, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order. The filing of a motion to compel shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition.

37 C.F.R. § 2.120(e)(2). Brink's Network argues that only a "party's" discovery obligations are not tolled and because Hampton is not a "party" in the trademark opposition proceeding, its discovery obligations *are* tolled. Brink's Network's reasoning, however, is fundamentally flawed.

Federal case law disfavors interpretation of an intellectual property law by negative implication. *See, e.g., J.E.M. Ag Supply Inc. v. Pioneer Hi-Bred Int'l Inc.*, 534 U.S. 124, 137-138 (2001) (Supreme Court “loathe” to interpret plant patent statutes as exclusive bases of protection by “negative inference” absent affirmative decision by Congress to do so); *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 165 (1989) (“[T]he Patent and Copyright Clauses do not, by their own force or by negative implication, deprive the States of the power to adopt rules for the promotion of intellectual creation within their own jurisdictions.”); *Kling v. Hallmark Cards, Inc.*, 225 F.3d 1030 (9th Cir. 2000) (District court’s reliance on dictum in appellate decision inappropriate because it was “certainly not intended to set a rule, by negative implication, for the prospective application of the laches doctrine in the wholly different context of copyright infringement suits.”); *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1581 (Fed. Cir. 1990) (“Congress’ silence on this issue [regarding venue in patent infringement cases] does not support a negative inference that the 1988 amendment was not intended to affect § 1400(b).”) (citation omitted).

In the instant case, Rule 2.120(e)(2) merely states that the filing of a motion to compel shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. It is silent, however, as to whether a non-party’s obligations are tolled or not. Construing Rule 2.120(e)(2) by negative implication to provide a non-party’s discovery obligations are tolled merely because a “party’s” discovery obligations are not tolled would be improper.

This is especially true because the Board has no jurisdiction over subpoenas issued by a district court, discussed in Section III.A. *supra*. If the Board cannot enforce or quash a subpoena, it is illogical to conclude that the Board can dictate whether or not a non-party’s

obligation to comply with a subpoena is tolled. Only the district court should logically have the power to do so.

It is also illogical from a common sense perspective to conclude that a non-party's discovery obligations are tolled while a party's obligations are not. Section 35 of the patent laws, which grants the federal district court jurisdiction to enforce the Subpoenas, states that the "provisions of the FEDERAL RULES OF CIVIL PROCEDURE relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office." 35 U.S.C. § 24. In turn, FED. R. CIV. P. 1 expressly states that the Rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." The Board follows this mandate. *See Sterling Drug Inc. v. Fo-We Forschungs-Und Verwertungs-Anstalt*, 146 USPQ 87, 89 (TTAB 1965) (Although the "mode of procedure [opposer has] selected to obtain relief is inappropriate...it is our duty under the mandate laid down in Rule 1 FRCP" to consider the mis-titled motion.).

How can it be considered "just" or "speedy" to require a party to wait for a motion to compel to be resolved (e.g., Brink's Network's motion against Brinkmann) before a non-party's discovery obligations (e.g., Brinkmann's subpoena to Hampton) are met? This is especially true, considering that the non-party has no standing, stake or interest in the motion to compel, much less in the proceeding. It would be much more efficient not to suspend the third-party's discovery obligations. Such a requirement is consistent with the policy considerations of Trademark Rule 2.120(e)(2), which was presumably intended to prevent parties from filing motions to compel with an ulterior motive in mind, namely, to forestall their own existing discovery obligations. The same rationale applies to third party discovery obligations, particularly here, where the non-party, for all intents and purposes, is in privity as a licensee of a party, and the party has taken control of the non-party's discovery responses. It is not "speedy"

or “just” to allow Brink’s Network to shield Hampton and avoid compliance with the Subpoenas while a motion to compel filed by Brink’s Network is pending. Allowing this would contradict the policy considerations of Trademark Rule 2.120(e)(2).

For all of the foregoing reasons, Brinkmann respectfully asks that the Board hold that Hampton’s compliance with the Subpoenas is not tolled pending disposition of Brink’s Network’s Motion to Compel.

**D. Brink’s Network’s Reliance on Cited Case Law is Misplaced**

In its Motion to Enforce Suspension, Brink’s Network cites several cases to argue that a district court’s power to enforce a subpoena issued to a non-party must be within the scope of the Board’s procedural rules and that because Trademark Rule 2.120(e)(2) allegedly tolls Hampton’s discovery obligations at this time, the district court should honor the toll. However, Brink’s Network’s reliance on those cases is misplaced.

First, as discussed in Section III.A. *supra*, Brink’s Network is not even directing its argument to the correct tribunal because the Board does not have jurisdiction over third party discovery. Only the federal district court that issued the Subpoenas has that jurisdiction – and it is Hampton, not Brink’s Network, who has the right to make the argument anyway. Second, the issue is not whether the federal district’s power to enforce the Subpoenas must be within the scope of the Trademark Rule 2.120(e)(2), but the actual scope of Trademark Rule 2.120(e)(2) itself. In the cases cited by Brink’s Network, the district courts gave deference to the U.S. Patent and Trademark Office rules where such rules were clear and unambiguous and exercised their discretion when the rules were not. The case law cited by Brink’s Network amply demonstrates that here, where Trademark Rule 2.120(e)(2) is silent as to whether a non-party’s discovery obligations are tolled, the federal district court has the proper discretion to interpret Trademark Rule 2.120(e)(2) as authorizing it to enforce the Subpoenas against Hampton.

By way of example, in the first case that Brink's Network cites, *Rosencruist-Gestao E Servicos LDA v. Virgin Enters.*, 511 F.3d 437 (4th Cir. 2007), the court ruled that under 35 U.S.C. § 24, a foreign corporation must obey a subpoena issued by the U.S. District Court for the Eastern District of Virginia, pursuant to a FED. R. CIV. P. 30(b)(6) notice in a TTAB proceeding, and must appear in Virginia to give trial testimony. Brink's Network notes that the Fourth Circuit stated that the subpoena power under 35 U.S.C. § 24 "assigns a supportive role to the district courts to ensure the smooth functioning of the procedures adopted by the PTO." *Id.* at 444. What Brink's Network fails to point out however is that in interpreting 35 U.S.C. § 24, the Fourth Circuit also stated that, "[w]e are neither bound by the [Trademark Manual of Examining Procedure] nor obligated to consider its statutory interpretation particularly persuasive." *Id.* at 448. In other words, the district court can use its own discretion in interpreting the PTO's rules of procedure.

Brink's Network also cites *Diageo Brands, B.V. v. Compania De Centroamerica, S.A.*, 2007 U.S. Dist. LEXIS 68132 (S.D. Fla., Sept. 14, 2007), which dealt with an applicant's motion to quash a subpoena issued by the district court against a non-party. The court denied the motion to quash, finding that it should have brought by the non-party, not the applicant, who had no standing. *Id.* at \*14. The court stated that under 35 U.S.C. § 24 and FED. R. CIV. P. 81, it could "compel only that discovery contemplated by the USPTO's discovery rules and within the scope of discovery permitted by those rules." *Id.* at \*8. In the instant case, however, where a trademark rule is silent with respect to a non-party's discovery obligations, the federal district court is properly authorized to interpret whether or not such obligations are within the PTO's rules.

In summary, Trademark Rule 2.120(e)(2) only holds that a party's discovery obligations are not tolled when a motion to compel is filed. The Rule is silent as to whether a

non-party's discovery obligations are tolled or not, and nothing in the PTO rules suggests, by negative implication, that they are. The federal district court is properly authorized to interpret the rule as such and also that the interpretation is properly within the scope of the PTO rules. Accordingly, Brinkmann can properly move to enforce the Subpoenas against Hampton in the federal district court, consistent with Trademark Rule 2.120(e)(2).

**E. Equity Dictates that Hampton Should Be Treated as a "Party"**

The equities in this proceeding also dictate prompt enforcement of the Subpoenas against Hampton. While Brink's Network makes much of the fact that Hampton is not a "party" in this proceeding, Hampton should, for all intents and purposes, be treated precisely like one – one that is in privity with party Brink's Network. Counsel for Brink's Network has stepped in to represent Hampton and interfere with all efforts to obtain discovery from Hampton. If Brink's Network is not allowed to toll its discovery obligations, it is only equitable to hold that neither should Hampton. *See, e.g., HighBeam Marketing LLC v. Highbeam Research LLC*, 85 USPQ.2d 1902, 1906 (TTAB 2008) (Discovery sanctions appropriate where opposer's counsel acted on behalf of a non-party witness and prevented the deposition of the witness from proceeding, the Board reasoning that "[c]ounsel's conduct is attributable in this instance to opposer as a party.") (citations omitted).

**F. Brink's Network's Motion to Compel in the Board is No Excuse for Hampton to Disobey the Subpoenas**

Brink's Network also tries to argue that Hampton should not have to comply with the Subpoenas until after Brink's Network's Motion to Compel is resolved by the Board, on the ground that Brink's Network is equitably entitled to discovery before Brinkmann. But the Board itself expressly forbids the *parties* in a trademark opposition proceeding from engaging in this type of gamesmanship:

Discovery in proceedings before the Board is not governed by any concept of priority of discovery or deposition. That is, a party which is the first to serve a request for discovery does not thereby gain a right to receive a response to its request before it must respond to its adversary's subsequently served request for discovery, and this is so even if its adversary fails to respond, or respond completely, to the first party's request for discovery. Rather, a party is under an obligation to respond to an adversary's request for discovery during the time allowed therefor under the applicable rules, irrespective of the sequence of requests for discovery, or of an adversary's failure to respond to a pending request for discovery.


TBMP § 403.03 (citations omitted). Hampton is not even a party in the trademark opposition proceeding, so Brink's Network's Motion to Compel and whether or not Brink's Network is entitled to discovery first is irrelevant to Hampton's compliance with the Subpoenas. Brink's Network's gamesmanship tactics to deter Brinkmann from obtaining discovery from Hampton—through Subpoenas served long before Brink's Network filed its Motion to Compel—only strengthens Brinkmann's argument that its discovery against non-party Hampton should be subject to the suspension. Accordingly, the Board should pay no heed to this "equitable" argument.

#### IV.

#### CONCLUSION

For all the reasons stated herein, Brinkmann respectfully requests that the Board deny Opposer's motion to enforce the suspension of proceedings.

Dated: January 11, 2010

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Attorneys for Applicant  
THE BRINKMANN CORPORATION



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**DECLARATION OF SUSAN HWANG**

I, Susan Hwang, hereby declare as follows:

1. I am an associate at the law firm of Sheppard, Mullin, Richter & Hampton LLP, counsel of record for Applicant The Brinkmann Corporation.
2. I make this declaration in connection with an opposition proceeding, No. 91164764, pending in the U.S. Patent and Trademark Office. Except as otherwise stated, I have personal knowledge of the facts set forth in this declaration and am competent to testify to those facts.
3. Attached as Exhibit A is a true and correct copy of an e-mail dated August 14, 2009 from Alan S. Cooper, counsel for Opposer to Susan Hwang, counsel for Applicant.
4. Attached as Exhibit B is a true and correct copy of a letter dated August 20, 2009 from Nancy S. Lapidus, counsel for Opposer to Susan Hwang.


5. Attached as Exhibit C is true and correct copy of an e-mail dated August 31, 2009 from Susan Hwang to Nancy S. Lapidus, attaching an amended schedule of deposition testimony topics and an amended schedule of documents and things to the Hampton Subpoenas.

6. Attached as Exhibit D is a true and correct copy of an e-mail dated September 1, 2009 from Nancy S. Lapidus to Susan Hwang.

7. Hampton failed to produce any documents or provide any deposition availability dates by November 13, 2009.

8. On December 21, 2009, the parties had a telephone conference regarding Hampton's refusal to comply with the Subpoenas, but the parties maintained their respective positions and did not resolve the matter. Brinkmann thus advised Hampton that it would prepare the motion to enforce the subpoenas for filing in the federal district court for the Central District of California.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles, California, on January 11, 2010.

By: \_\_\_\_\_  
SUSAN HWANG

## **Exhibit A**

**Susan Hwang**

---

**From:** Cooper, Alan [CooperA@howrey.com]  
**Sent:** Friday, August 14, 2009 6:34 AM  
**To:** Susan Hwang  
**Cc:** Gary Clark; Lapidus, Nancy; D.Smith Viewmail  
**Subject:** Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002  
**Attachments:** 20090814091325.pdf; ATT60364.txt

Susan:

As discussed during Mr. Lennon's deposition, attached is a Notice of Taking Deposition of J. Baxter Brinkmann set for October 6, 2009, in Dallas.

Please be advised that Nancy and I will be representing Hampton International Products Corporation in connection with the document production and Rule 30(b)(6) deposition pursuant to the subpoenas attached to your email of August 10, 2009. We are consulting with Hampton regarding the document production and will let you know if that can be accomplished by August 25th. However, the September 1st date for the deposition will not work because I will be out of the country during the period September 1-16. We propose that the Hampton deposition should take place sometime in mid-October which should not pose any problem given the extension of the discovery period pursuant to the Board's Order entered on August 7th. Given the fact that Brink's Network has been very cooperative in scheduling Mr. Lennon's deposition and handling supplemental production of documents in connection therewith while we have been waiting patiently for a number of weeks for a date for Mr. Brinkmann's deposition, we believe that Mr. Brinkmann's deposition in Dallas should occur before the Hampton deposition.

We are conferring with Hampton and will provide you with several dates in the October 7-13 time frame when the Rule 30(b)(6) deposition could take place.

If you have any questions regarding the points discussed above, please advise.

Alan

**Alan S. Cooper**  
Partner

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Munich New York Northern Virginia Paris Salt Lake City San Francisco Taipei **Washington DC**

12/28/2009

## **Exhibit B**

**Nancy S. Lapidus**  
Partner

T 202.383.6865  
F 202.383.7195  
lapidusN@howrey.com

August 20, 2009

Via E-mail  
Confirmation Copy by US Mail

Susan Hwang, Esquire  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.  
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

We reviewed the draft transcript of Frank Lennon's discovery deposition taken on August 5, 2009. The testimony pages and exhibits listed below should be designated confidential. The page references are to page number and line number separated by a colon. As we discussed at the conclusion of Mr. Lennon's deposition, please request that the court reporter prepare two transcripts to separate the confidential and non-confidential testimony and exhibits. Upon receipt of the transcripts, we will forward them to Mr. Lennon for review.

- (1) 25:12 – 26:21
- (2) 30:10 – 32:1
- (3) 32:18 – 36:19
- (4) 36:23 – 37:13
- (5) 40:23 – 43:1
- (6) 43:18 – 45:4 and Exhibit B-5
- (7) 70:15 – 72:17
- (8) 73:23 – 78:3
- (9) 78:4 – 78:16
- (10) 82:15 – 83:2
- (11) 103:8 – 103:20

Susan Hwang, Esquire  
August 20, 2009  
Page 2

- (12) 105:7 – 105:11
- (13) 105:12 – 106:2
- (14) 106:3 – 106:9
- (15) 108:6 – 110:1
- (16) 110:22 – 113:12
- (17) 124:9 – 124:11
- (18) 132:6 - 132:14
- (19) 133:18 - 138:8 and Exhibit B-19
- (20) 138:14 – 142:22 and Exhibits B-20 through B-27
- (21) 143:24 – 145:20
- (22) 146:14 – 149:16 and Exhibit B-30
- (23) 149:17 – 152:9 and Exhibit B-31
- (24) 152:10 – 153:18
- (25) 153:19 – 154:8
- (26) 154:9 – 156:9 and Exhibit B-32
- (27) 156:10 – 162:4 and Exhibits B-33, B-34 and B-35
- (28) 163:4 – 164:9 and Exhibits B-36 and B-37
- (29) 164:20 – 165:24 and Exhibits B-39 through B-43
- (30) 167:4 – 167:11
- (31) 168:8 – 170:1
- (32) 174:18 – 175:9

Susan Hwang, Esquire  
August 20, 2009  
Page 3

Turning to other matters in this proceeding, please confirm that Mr. Brinkmann will be available for the deposition noticed for October 6, 2009 in Dallas, Texas.

As previously advised, we will be representing Hampton Products International Corporation ("Hampton") in connection with the document production and deposition pursuant to the subpoenas attached to your email of August 10, 2009. Hampton has informed us that it was not served with the Subpoena to Produce Documents attached to your email of August 10, 2009. If you believe that such service was effected, please provide us with a copy of the completed Proof of Service. In any event, after consultation with Hampton, we have determined that it would not be possible to produce the large number of requested documents by the August 25 deadline set forth in the subpoena. Hampton will endeavor to gather the responsive documents in the next few weeks. Further to Alan's email of August 14, please let us know of dates in mid-October that are feasible for the deposition of Hampton.

If you have any questions regarding the above, please let us know.

Sincerely,

  
Nancy S. Lapidus

NSL/Inf

Cc: Kevin Yocum, Esq.  
Alan Cooper, Esq.



## **Exhibit C**

**Susan Hwang**

---

**From:** Susan Hwang  
**Sent:** Monday, August 31, 2009 3:07 PM  
**To:** 'Lapidus, Nancy'  
**Cc:** Gary Clark; 'Cooper, Alan'  
**Subject:** FW: Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002  
**Attachments:** Hampton Amended Schedule of Testimony Topics.PDF; Hampton Amended Schedule of Documents.PDF

Nancy,

We are in receipt of Alan's e-mail below regarding your representation of Hampton in connection with the FRCP 30(b)(6) deposition and document production. Attached are copies of an amended schedule of testimony topics and an amended schedule of requested documents for Hampton. Each amended schedule identifies two additional items at the end of each schedule. No other changes have been made. Can you please confirm that you will accept service of these schedules, given your representation of Hampton?

We look forward to hearing from you regarding deposition availability dates as well as production of the requested documents.

Susan

---

**From:** Cooper, Alan [mailto:CooperA@howrey.com]  
**Sent:** Friday, August 14, 2009 6:34 AM  
**To:** Susan Hwang  
**Cc:** Gary Clark; Lapidus, Nancy; D.Smith Viewmail  
**Subject:** Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002

Susan:

As discussed during Mr. Lennon's deposition, attached is a Notice of Taking Deposition of J. Baxter Brinkmann set for October 6, 2009, in Dallas.

Please be advised that Nancy and I will be representing Hampton International Products Corporation in connection with the document production and Rule 30(b)(6) deposition pursuant to the subpoenas attached to your email of August 10, 2009. We are consulting with Hampton regarding the document production and will let you know if that can be accomplished by August 25th. However, the September 1st date for the deposition will not work because I will be out of the country during the period September 1-16. We propose that the Hampton deposition should take place sometime in mid-October which should not pose any problem given the extension of the discovery period pursuant to the Board's Order entered on August 7th. Given the fact that Brink's Network has been very cooperative in scheduling Mr. Lennon's deposition and handling supplemental production of documents in connection therewith while we have been waiting patiently for a number of weeks for a date for Mr. Brinkmann's deposition, we believe that Mr. Brinkmann's deposition in Dallas should occur before the Hampton deposition.

We are conferring with Hampton and will provide you with several dates in the October 7-13 time frame when the Rule 30(b)(6) deposition could take place.

If you have any questions regarding the points discussed above, please advise.

1/8/2010

Alan

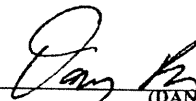
**Alan S. Cooper**  
Partner

**HOWREY** LLP  
1299 Pennsylvania Ave NW  
Washington, DC 20004-2402  
Direct: +1 202.383.7435  
Fax: +1 202.318.4472  
CooperA@howrey.com  
www.howrey.com

Amsterdam Brussels Chicago East Palo Alto Houston Irvine London Los Angeles Madrid  
Munich New York Northern Virginia Paris Salt Lake City San Francisco Taipei **Washington DC**

Attorney or Party without Attorney: SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP 333 SOUTH HOPE STREET, 48TH FLOOR LOS ANGELES, CA 90071 Telephone No: 213-620-1780      FAX No: 213-620-1398			For Court Use Only			
Attorney for: Defendant					Ref. No. or File No.: OSEM-116943	
Insert name of Court, and Judicial District and Branch Court: United States Patent And Trademark Office Before The Trademark Trial And Appeal Board						
Plaintiff: BRINK'S NETWORK, INCORPORATED Defendant: THE BRINKMANN CORPORATION						
<b>PROOF OF SERVICE SUBPOENA</b>		Hearing Date:	Time:	Dept/Div:	Case Number: 91164764	

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES; SCHEDULE OF DOCUMENTS AND THINGS TO SUBPOENA TO HAMPTON PRODUCTS INTERNATIONAL CORPORATION
3. a. Party served: HAMPTON PRODUCTS INTERNATIONAL CORPORATION  
 b. Person served: NICOLE CARTER, AUTHORIZED TO ACCEPT SERVICE
4. Address where the party was served: 50 ICON  
 FOOTHILL RANCH, CA 92610
5. I served the party:
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Tue., Aug. 11, 2009 (2) at: 1:24PM
  - b. I received this subpoena for service on: Tuesday, August 11, 2009
6. Witness fees were not demanded or paid.
7. Person Who Served Papers:
  - a. DANNY BAGLEY
  - b. ProLegal  
 1706 S. Figueroa Street  
 LOS ANGELES, CA 90015
  - c. (213) 481-8100, FAX (213) 763-8440
  - d. The Fee for Service was: Recoverable Cost Per CCP 1033.5(a)(4)(B)
  - e. I am: (3) registered California process server
    - (i) Employee
    - (ii) Registration No.: 4841
    - (iii) County: Los Angeles
8. I declare under penalty of perjury under the laws of the State of California and under the laws of the United States Of America that the foregoing is true and correct.  
 Date: Thu, Aug. 13, 2009



**Susan Hwang**

---

**From:** Susan Hwang  
**Sent:** Monday, August 31, 2009 3:07 PM  
**To:** 'Lapidus, Nancy'  
**Cc:** Gary Clark; 'Cooper, Alan'  
**Subject:** FW: Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002  
**Attachments:** Hampton Amended Schedule of Testimony Topics.PDF; Hampton Amended Schedule of Documents.PDF

Nancy,

We are in receipt of Alan's e-mail below regarding your representation of Hampton in connection with the FRCP 30(b)(6) deposition and document production. Attached are copies of an amended schedule of testimony topics and an amended schedule of requested documents for Hampton. Each amended schedule identifies two additional items at the end of each schedule. No other changes have been made. Can you please confirm that you will accept service of these schedules, given your representation of Hampton?

We look forward to hearing from you regarding deposition availability dates as well as production of the requested documents.

Susan

---

**From:** Cooper, Alan [mailto:CooperA@howrey.com]  
**Sent:** Friday, August 14, 2009 6:34 AM  
**To:** Susan Hwang  
**Cc:** Gary Clark; Lapidus, Nancy; D.Smith Viewmail  
**Subject:** Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002

Susan:

As discussed during Mr. Lennon's deposition, attached is a Notice of Taking Deposition of J. Baxter Brinkmann set for October 6, 2009, in Dallas.

Please be advised that Nancy and I will be representing Hampton International Products Corporation in connection with the document production and Rule 30(b)(6) deposition pursuant to the subpoenas attached to your email of August 10, 2009. We are consulting with Hampton regarding the document production and will let you know if that can be accomplished by August 25th. However, the September 1st date for the deposition will not work because I will be out of the country during the period September 1-16. We propose that the Hampton deposition should take place sometime in mid-October which should not pose any problem given the extension of the discovery period pursuant to the Board's Order entered on August 7th. Given the fact that Brink's Network has been very cooperative in scheduling Mr. Lennon's deposition and handling supplemental production of documents in connection therewith while we have been waiting patiently for a number of weeks for a date for Mr. Brinkmann's deposition, we believe that Mr. Brinkmann's deposition in Dallas should occur before the Hampton deposition.

We are conferring with Hampton and will provide you with several dates in the October 7-13 time frame when the Rule 30(b)(6) deposition could take place.

If you have any questions regarding the points discussed above, please advise.

12/28/2009

Alan

**Alan S. Cooper**  
Partner

**HOWREY** LLP  
1299 Pennsylvania Ave NW  
Washington, DC 20004-2402  
Direct: +1 202.383.7435  
Fax: +1 202.318.4472  
CooperA@howrey.com  
www.howrey.com

Amsterdam Brussels Chicago East Palo Alto Houston Irvine London Los Angeles Madrid  
Munich New York Northern Virginia Paris Salt Lake City San Francisco Taipei **Washington DC**

12/28/2009

**AMENDED SCHEDULE OF TESTIMONY TOPICS  
TO SUBPOENA TO  
HAMPTON PRODUCTS INTERNATIONAL CORPORATION  
50 ICON  
FOOTHILL RANCH, CA 92610  
TEL. (949) 472-4256  
FAX (949) 472-9657**

This Amended Schedule of Testimony Topics sets forth the matters below on which Applicant Brinkmann seeks examination from Hampton. Hampton, therefore, must designate one or more of its officers, directors, managing agents, employees, or other persons who consent to testify on its behalf who are the most qualified to testify on its behalf as to the following matters.

**I.**

**DEFINITIONS**

1. "You," "your" and "Hampton" each mean Hampton Products International Corporation, all of its divisions, departments, and other operating units (including but not limited to Hampton Automotive Group), and include its present and principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. "Person" means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. "Brink's Network" and "Opposer" mean (a) the entities comprising (a) Opposer Brink's Network, Incorporated, including (i) all of its divisions, departments, and

other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink's Company, Brink's Guarding Services, Inc., Brink's Home Security, Inc. and Brink's, Incorporated (collectively, the "Opposer entities"), and (b) the individuals comprising all of the Opposer entities' present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. "Brinkmann" and "Applicant" means (a) Applicant The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. "Document" means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.



6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the word “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided under any Brink’s Mark by Hampton.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. “Identify” or to give the “identity” of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. “Communication” means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

## II.

### INSTRUCTIONS

1. Third-party witness Hampton Products International Corporation's deposition is being taken pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45. Pursuant to Rule 30(b)(6), Applicant Brinkmann may, in a subpoena for a deposition directed at a corporation or partnership or association, "describe with reasonable particularity the matters on which examination is requested." Then, the "organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify . . . . The persons so designated shall testify as to matters known or reasonably available to the organization."

2. The deposition will take place before an officer authorized to administer oaths by the laws of the United States or the laws of the place where the examination is to be held and in accordance with the provisions of Federal Rules of Civil Procedure 30, 45(a), and 45(a)(1)(C), and will be stenographically recorded.

### **III.**

#### **MATTERS FOR EXAMINATION**

##### **TOPIC FOR TESTIMONY NO. 1:**

Hampton's business and its products or services.

##### **TOPIC FOR TESTIMONY NO. 2:**

Your business relationship with Brink's Network.

##### **TOPIC FOR TESTIMONY NO. 3:**

All communications between you and Brink's Network pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.

##### **TOPIC FOR TESTIMONY NO. 4:**

All presentations, studies, analyses or investigations pertaining to Brink's Network, or any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.

##### **TOPIC FOR TESTIMONY NO. 5:**

All negotiations or discussions with Brink's Network pertaining to any potential, proposed or actual license for any Brink's Mark or Brink's Product.

##### **TOPIC FOR TESTIMONY NO. 6:**

All negotiations or discussions with Brink's Network pertaining to any amendments for any license for any Brink's Mark or Brink's Product.

**TOPIC FOR TESTIMONY NO. 7:**

All licenses with Brink's Network for any Brink's Mark or Brink's Product.

**TOPIC FOR TESTIMONY NO. 8:**

All amendments to any licenses with Brink's Network for any Brink's Mark or Brink's Product.

**TOPIC FOR TESTIMONY NO. 9:**

The identification of each Brink's Mark used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., by product name and SKU) in the United States, from introduction to the present.

**TOPIC FOR TESTIMONY NO. 10:**

The dates that each Brink's Product manufactured, advertised, offered for sale or sold by Hampton were first offered for sale and, if applicable, stopped offering for sale.

**TOPIC FOR TESTIMONY NO. 11:**

The channels of distribution for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., via bricks and mortar stores, mail-order, catalog, Internet, etc.) in the United States.

**TOPIC FOR TESTIMONY NO. 12:**

The amount of sales annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

**TOPIC FOR TESTIMONY NO. 13:**

The content of all advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

**TOPIC FOR TESTIMONY NO. 14:**

The avenues (e.g., print, television, radio, Internet, etc.) for all advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

**TOPIC FOR TESTIMONY NO. 15:**

The amount of advertising and promotional expenditures annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

**TOPIC FOR TESTIMONY NO. 16:**

The amount of royalty payments annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

**TOPIC FOR TESTIMONY NO. 17:**

The purchasers and prospective purchasers for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States

**TOPIC FOR TESTIMONY NO. 18:**

The marketplace competitors for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States

**TOPIC FOR TESTIMONY NO. 19:**

The retailers for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., security light, lock, doorknob, coupler, etc.) in the United States

**TOPIC FOR TESTIMONY NO. 20:**

All quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 21:**

All activities of Brink's Network related to enforcing quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 22:**

All trademark usage guidelines by Brink's Network for any Brink's Mark (including use of the federal registration symbol), including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 23:**

All activities of Brink's Network related to enforcing trademark usage guidelines for any Brink's Mark used by Hampton (including use of the federal registration symbol), including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 24:**

Hampton's knowledge of any federal trademark applications or registrations by Brink's Network for any marks incorporating BRINK'S or BRINKS.

**TOPIC FOR TESTIMONY NO. 25:**

Instances of customer complaints associated with any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 26:**

Hampton's knowledge of Brinkmann, Brinkmann's Products or Brinkmann's Mark, including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 27:**

Hampton's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark, including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 28:**

The spin-off by The Brink's Company of Brinks Home Security Holdings, Inc., including any communications between you and Brink's Network on such topic.

**TOPIC FOR TESTIMONY NO. 29:**

The identification of the individuals at Hampton and at Brink's Network most knowledgeable about any presentations, discussions, negotiations, licenses or amendments to any licenses between the parties, including the first and last name, title and involvement of such individuals.



**TOPIC FOR TESTIMONY NO. 30:**

All instances, if any, of actual confusion between Broadview or any Brink's Products manufactured, advertised, offered for sale or sold by Hampton, on the one hand, and Brinkmann or its Brinkmann's Products on the one other hand, including the identity of the person confused, the date, location, and complete circumstances of the confusion.

**TOPIC FOR TESTIMONY NO. 31:**

All instances, if any, in which Hampton has ever received any inquiries as to whether any Brinkmann Products manufactured, distributed, or marketed by or on behalf of Brinkmann are associated with, sponsored by, or in any manner connected with the Hampton.

**AMENDED SCHEDULE OF DOCUMENTS AND THINGS  
TO SUBPOENA TO  
HAMPTON PRODUCTS INTERNATIONAL CORPORATION  
50 ICON  
FOOTHILL RANCH, CA 92610  
TEL. (949) 472-4256  
FAX (949) 472-9657**

This Amended Schedule of Documents and Things identifies the documents and tangible things requested by The Brinkmann Corporation, under Rule 45(a)(1)(C) and (d) of the Federal Rules of Civil Procedure and Rule 2.120(a) of the Trademark Rules of Practice, to be produced by Hampton Products International Corporation for inspection and copying pursuant to the attached subpoena.

**I.**

**DEFINITIONS**

1. "You," "your" and "Hampton" each mean Hampton Products International Corporation, all of its divisions, departments, and other operating units (including but not limited to Hampton Automotive Group) and include its present and principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. "Person" means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. “Brink’s Network” and “Opposer” mean (a) the entities comprising Opposer Brink’s Network, Incorporated, including (i) all of its divisions, departments, and other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink’s Company, Brink’s Guarding Services, Inc., Brink’s Home Security, Inc. and Brink’s, Incorporated (collectively, the “Opposer entities”), and (b) the individuals comprising all of the Opposer entities’ present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. “Brinkmann” and “Applicant” means (a) The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. “Document” means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have

ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the words “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided by Hampton under any Brink’s Mark.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an

allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. “Identify” or to give the “identity” of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. “Communication” means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

## II.

### INSTRUCTIONS

1. Rule 45(d)(1) of the Federal Rules of Civil Procedure provides that “[a] person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.” If you elect to produce documents as they are kept in the usual course of business, they should be produced in the boxes, file folders, bindings, or other containers in which the documents are found. The title, labels, or other descriptions of the boxes, file folders, binders, or other containers should be left intact.

2. Whenever appropriate, the singular form of a word shall be interpreted in the plural and vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms “and” as well as “or” shall be construed either conjunctively or disjunctively, as necessary to bring within the scope of this subpoena any documents that might otherwise be considered outside their purview; and words imparting the masculine include the feminine and vice versa.

3. In producing the requested documents and things, you are required to furnish all documents and things available to you, including, by way of illustration only, and not by way of limitation, documents and things in the possession of your attorneys, or in the possession of your or their consultants, investigators, advisors, agents, or associates.

4. Rule 45(d)(2) of the Federal Rules of Civil Procedure provides that “[w]hen information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be expressly made and shall be

supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.” If any documents requested herein are withheld by you based upon a claim of privilege or work product, state as to each such document:

- (1) The basis for withholding the document;
- (2) The nature of the document withheld (e.g., letter);
- (3) The date of the document;
- (4) The identity of the author;
- (5) The identity of each recipient of the document or any copy hereof;
- (6) The length of the document in pages;
- (7) The location of the original and each copy of the document; and
- (8) The general subject matter of the document.

### III.

#### **DOCUMENTS AND THINGS REQUESTED**

1. All documents and things pertaining to any business relationship with Brink's Network.
2. All documents and things constituting or reflecting any presentations, studies, analyses or investigations pertaining to Brink's Network or any Brink's Mark or Brink's Product.
3. All documents and things constituting or reflecting any proposals, negotiations, discussions or communications pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.
4. All documents and things constituting or reflecting any proposals, negotiations, discussions or communications pertaining to any potential, proposed or actual amendments to any license with Brink's Network for any Brink's Mark or Brink's Product.
5. All licenses with Brink's Network for any Brink's Mark or Brink's Product.
6. All amendments to any licenses with Brink's Network for any Brink's Mark or Brink's Product.
7. Documents and things sufficient to identify each Brink's Mark ever used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, by product name and SKU) in the United States, from introduction to the present.



8. Documents and things sufficient to identify each channel of distribution (*e.g.*, bricks and mortar stores, mail-order, catalog, Internet, *etc.*) for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

9. Documents and things sufficient to identify the amount of sales annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

10. A sample of each different advertisement or promotional materials ever used by Hampton for each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

11. Documents and things sufficient to identify all avenues (*e.g.*, print, television, radio, Internet, *etc.*) of advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

12. Documents and things sufficient to identify the amount of advertising and promotional expenditures annually in dollars in the United States by Hampton for Brink's Products manufactured, advertised, offered for sale or sold by Hampton from introduction to the present, broken down by type or category of Brink's Product (*e.g.*, locks, door hardware, lighting, *etc.*) if available.

13. Documents and things sufficient to identify the amount of royalty payments to Brink's Network annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the

present, broken down by type or category of Brink's Product (e.g., locks, door hardware, lighting, etc.) if available.

14. Documents and things sufficient to identify the demographics of purchasers and prospective purchasers for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

15. Documents and things sufficient to identify the marketplace competitors for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

16. A representative sample of each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

17. A representative sample of packaging for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

18. Documents and things sufficient to identify each retailer for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

19. All catalogs for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, from introduction of the product to the present.

20. All documents and things pertaining to quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

21. All documents and things pertaining to any communications between you and Brink's Network referring to quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

22. All documents and things pertaining to any trademark usage guidelines by Brink's Network for any Brink's Mark.

23. All documents and things pertaining to any communications between you and Brink's Network referring to trademark usage guidelines for any Brink's Mark.

24. All documents and things pertaining to any knowledge by Hampton of Brink's Network's federal applications or registrations incorporating BRINK'S.

25. Documents and things sufficient to identify the types of customer complaints associated with any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

26. All documents and things pertaining to Brink's Network, any Brink's Mark or Brink's Products not otherwise requested herein.

27. All documents and things pertaining to Hampton's knowledge of Brinkmann, Brinkmann's Products or Brinkmann's Mark, including any investigations.

28. All documents and things pertaining to Hampton's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark, including any investigations.

29. All documents and things pertaining to Hampton's knowledge of the spin-off by The Brink's Company of Brinks Home Security Holdings, Inc.

30. All documents and things pertaining to the effect on Hampton of the spin-off by The Brink's Company of Brinks Home Security Holdings, Inc.

31. Documents and things sufficient to identify all individuals at Hampton involved in any licenses, license negotiations or communications between Hampton and Brink's Network.

32. Documents and things sufficient to identify all individuals at Brink's Network involved in any licenses, license negotiations or communications between Hampton and Brink's Network.

33. All documents pertaining to any communications between you and any persons referring to Brinkmann, any Brinkmann Mark or Brinkmann Product from 1983 to the present.

34. All documents pertaining to any communications between you and any persons referring to any other parties using any Brink formative mark.

35. All documents and things pertaining to any instances, if any, of actual confusion between Broadview or any Brink's Products manufactured, advertised, offered for sale or sold by Hampton, on the one hand, and Brinkmann or its Brinkmann's Products on the one other hand.

36. All documents and things pertaining to any instances, if any, in which Hampton has ever received any inquiries as to whether any Brinkmann Products manufactured, distributed, or marketed by or on behalf of Brinkmann are associated with, sponsored by, or in any manner connected with the Hampton.

## **Exhibit D**

**Susan Hwang**

**From:** Lapidus, Nancy [LapidusN@howrey.com]  
**Sent:** Tuesday, September 01, 2009 12:43 PM  
**To:** Susan Hwang  
**Cc:** Gary Clark; Cooper, Alan  
**Subject:** RE: Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002  
**Attachments:** ATT173640.txt

Susan: We will accept service of the amended schedules on behalf of Hampton.

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**From:** Susan Hwang [mailto:SHwang@sheppardmullin.com]  
**Sent:** Monday, August 31, 2009 6:07 PM  
**To:** Lapidus, Nancy  
**Cc:** \_gclark@sheppardmullin.com; Cooper, Alan  
**Subject:** FW: Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002

Nancy,

We are in receipt of Alan's e-mail below regarding your representation of Hampton in connection with the FRCP 30(b)(6) deposition and document production. Attached are copies of an amended schedule of testimony topics and an amended schedule of requested documents for Hampton. Each amended schedule identifies two additional items at the end of each schedule. No other changes have been made. Can you please confirm that you will accept service of these schedules, given your representation of Hampton?

We look forward to hearing from you regarding deposition availability dates as well as production of the requested documents.

Susan

 <p><b>SHEPPARD MULLIN</b>  SHEPPARD MULLIN RICHTER &amp; HAMPTON LLP  ATTORNEYS AT LAW</p>	<p>333 South Hope Street  48th Floor  Los Angeles, CA 90071-1448  213.620.1780 office  213.620.1398 fax  <a href="http://www.sheppardmullin.com">www.sheppardmullin.com</a></p>
<p><b>Susan Hwang</b>  213.617.4279 direct   213.443.2892 direct fax  SHwang@sheppardmullin.com   <a href="#">Bio</a></p>	

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**From:** Cooper, Alan [mailto:CooperA@howrey.com]  
**Sent:** Friday, August 14, 2009 6:34 AM  
**To:** Susan Hwang

12/28/2009

**Cc:** Gary Clark; Lapidus, Nancy; D.Smith Viewmail

**Subject:** Brink's Network, Inc. v. Brinkmann Corp., Our File No. 05666.0002

Susan:

As discussed during Mr. Lennon's deposition, attached is a Notice of Taking Deposition of J. Baxter Brinkmann set for October 6, 2009, in Dallas.

Please be advised that Nancy and I will be representing Hampton International Products Corporation in connection with the document production and Rule 30(b)(6) deposition pursuant to the subpoenas attached to your email of August 10, 2009. We are consulting with Hampton regarding the document production and will let you know if that can be accomplished by August 25th. However, the September 1st date for the deposition will not work because I will be out of the country during the period September 1-16. We propose that the Hampton deposition should take place sometime in mid-October which should not pose any problem given the extension of the discovery period pursuant to the Board's Order entered on August 7th. Given the fact that Brink's Network has been very cooperative in scheduling Mr. Lennon's deposition and handling supplemental production of documents in connection therewith while we have been waiting patiently for a number of weeks for a date for Mr. Brinkmann's deposition, we believe that Mr. Brinkmann's deposition in Dallas should occur before the Hampton deposition.

We are conferring with Hampton and will provide you with several dates in the October 7-13 time frame when the Rule 30(b)(6) deposition could take place.

If you have any questions regarding the points discussed above, please advise.

Alan

**Alan S. Cooper**  
Partner

**HOWREY LLP**  
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Washington, DC 20004-2402  
Direct: +1 202.383.7435  
Fax: +1 202.318.4472  
CooperA@howrey.com  
www.howrey.com

Amsterdam Brussels Chicago East Palo Alto Houston Irvine London Los Angeles Madrid  
Munich New York Northern Virginia Paris Salt Lake City San Francisco Taipei **Washington DC**

12/28/2009

CERTIFICATE OF SERVICE

This is to certify that I have this day, January 11, 2010, caused to be served a copy of the foregoing “Applicant’s Opposition to Opposer’s Motion to Enforce Suspension of Proceedings” by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Nancy S. Lapidus, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.

  
\_\_\_\_\_  
Susan Hwang